

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JACK LECK, II,

Petitioner,

v.

MARK STRONG,

Respondent.

CASE NO. 15-cv-05869 RJB

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

THIS MATTER comes before the Court following the Report and Recommendation of Magistrate Judge J. Richard Creatura. Dkt. 26. Petitioner filed an objection. Dkt. 27. The Court has considered the Report and Recommendation, Petitioner's objection, and the remainder of the file herein.

The Court should adopt the Report and Recommendation. In response to Petitioner's objections to the Report and Recommendation, the Court also adds the following:

Petitioner makes six arguments, all without merit. Only Petitioner's first argument raises anything not addressed in the Report and Recommendation.

First, Petitioner argues that there is a conflict of interest that has arisen "as of the time the court receives this document," because "Mark Strong will no longer be CEO/Superintendent of the Special Commitment Center," but instead, an Assistant Attorney General who formally represented the Center resume that role. Even if this is true, such a conflict would only harm

1 Respondent's ability to effectively respond and would have no bearing on the Court's
2 consideration of the petition's merits.

3 Second, Petitioner argues that he should have been appointed counsel. The Report and
4 Recommendation addressed this concern, rejecting the claim on the basis that it wrongly
5 assumed a right to counsel at a civil, pre-SVP psychological examination. *Id.*, at 11-14.

6 Third, Petitioner argues that magistrate judge has "cloud[ed] the issues" and ignores the
7 "jurisdiction and counsel issues presented[.]" This is incorrect; the magistrate judge directly
8 addressed both issues. *Id.*, at 9-14.

9 Fourth, Petitioner argues that he has exhausted all available state remedies. The Report
10 and Recommendation and this Court concur, but as explained, the petition fails on the merits, not
11 because Petitioner failed to exhaust. *Id.*, at 5-8.

12 Fifth, Petitioner argues that Petitioner was "WAS NOT in custody NOR any jurisdiction
13 of DOC" [sic] when his prison sentence expired. However, even if Petitioner is correct, as the
14 Report and Recommendation explained, the purpose of federal habeas relief is not to litigate the
15 application or interpretation of state law. *Id.*, at 9-11.

16 Sixth, Petitioner argues that his right to counsel was violated, because he is entitled to an
17 attorney at all stages of his SVP proceedings. This argument is duplicative of his second
18 argument, which was addressed by the Report and Recommendation. *Id.*, at 11-14.

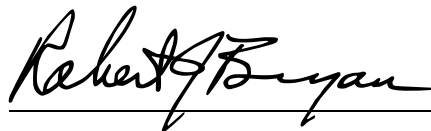
19 * * *

20 The Court, having reviewed the Report and Recommendation of Magistrate Judge J.
21 Richard Creatura, objections to the Report and Recommendation, and the remaining record, does
22 hereby find and **ORDER:**

1 (1) The Court ADOPTS the Report and Recommendation and HEREBY DISMISSES
2 Petitioner's petition; and

3 (2) The undersigned DENIES the issuance of a certificate of appealability. Petitioner
4 failed to show that the state appellate courts' adjudication of grounds one and two was contrary
5 to, or an unreasonable application of, clearly established federal law.

6 **DATED** this 25th day of May, 2016.

7 
8

9 ROBERT J. BRYAN
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24